

This letter discusses claims for credit for automobiles returned under the New Vehicle Buyer Protection Act. See Ill. Adm. Code 130.1501. (This is a GIL).

August 3, 2004

Dear Xxxxx:

This letter is in response to your letter dated January 29, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you hoping you can answer my question. Recently, ABC repurchased a vehicle from a XYZ. We had nothing to do with the negotiations or the settlement agreed upon. Now, XYZ is suing us for a refund of the sales taxes he paid when he purchased the vehicle. What is the law in such a situation?

Where a taxpayer under the Retailers' Occupation Tax Act pays to the Department an amount of tax or penalty or interest not due under the provisions of the Act, either as the result of a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department. Beginning August 17, 1995, tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the purchase price of the vehicle, as provided in Section 3 of the New Vehicle Buyer Protection Act, 815 ILCS 380/3. See 86 Ill. Adm. Code 130.1501(a)(1).

The claim is limited to taxes applicable to the purchase price of the automobile sold to the consumer, which includes all collateral charges required to be included in the sales tax calculation (e.g., documentary fees), but does not include any reasonable allowance for consumer use of the automobile deducted from the purchase price by the manufacturer. Retailers filing such claims must comply with all requirements of 86 Ill. Adm. Code 130.1501.

Please note that under the Retailers' Occupation Tax, it is the retailer's decision whether or not to submit a claim. Such a practice is not required by statute. It is a business decision to be made by

the retailer. The retailer must prove to the Department that they ("Retailer"), returned the tax monies paid by the consumer on the original purchase back to the consumer to prevent unjust enrichment on behalf of the retailer. See 86 Ill. Adm. Code 130.1501(a)(2).

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

EEB:msk